

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:08-cr-134

v.

HON. JANET T. NEFF

LEROY THURMAN, JR.,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Leroy Thurman, Jr. has filed a motion for modification or reduction of sentence (Dkt 167) pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to cocaine base (crack cocaine).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 750 of the United States Sentencing Guidelines modified U.S.S.G. § 2D1.1, the Drug Quantity Table with regard to cocaine base (crack cocaine), and U.S.S.G. § 2D2.1(b). These modifications were made retroactive effective November 1, 2011. U.S.S.G. § 1B1.10(c).

However, the defendant is ineligible for consideration of modification of sentence under 18 U.S.C. § 3582(c)(2), because the offense level originally used at sentencing is unchanged by the retroactive amendment. The defendant's offense level under U.S.S.G. § 2D1.1 was determined by use of 49.36 grams of cocaine and 1.07 grams of cocaine base. Application of the new amendment results in a conversion of these drugs to 9.8 and 3.8 kilograms of marijuana respectively. The 13.6

kilograms of marijuana calls for an offense level of 16. This is the same offense level used at the original sentencing. Even applying a 1:1 crack-to-powder ratio to the drug quantities results in an offense level of 16 so under any calculation defendant is not entitled to relief.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (Dkt 167) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

IT IS FURTHER ORDERED that defendant's request for court appointed counsel is also DENIED.

DATED: March 9, 2012

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge